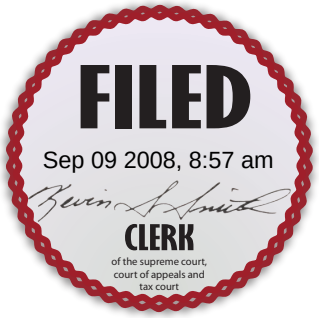

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IN THE
COURT OF APPEALS OF INDIANA

ALBERTA THOMPSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0802-CR-85
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Dennis Thomas, Judge Pro Tempore
Cause No. 49F10-0708-CM-168657

September 9, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Alberta Thompson appeals her conviction for battery as a class A misdemeanor.[1] Thompson raises one issue, which we restate as whether the evidence is sufficient to sustain her conviction. We affirm.

The relevant facts follow. On August 15, 2007, Jack Lallathin, a general manager at a shoe store, observed Thompson and Delores McKenzie reaching underneath some "shoe tables" in a corner of the store. Transcript at 12. When Lallathin approached the women and asked if he could help them, they became "belligerent," accused Lallathin of being a racist, and "started taking shoes out and throwing them about." Id. Lallathin asked them to leave, but they responded that they "didn't feel that the[y] had to leave." Id. at 17. Lallathin and the women exchanged swear words, and McKenzie spat on him. Thompson and McKenzie then moved to the front of the store "yelling and screaming" with their arms extended outward knocking merchandise off of the tables. Id. at 18. When they reached the front door, they again refused to leave, and Thompson spat on Lallathin. Id.

As Lallathin attempted to escort them outside, McKenzie spat on him again, hit him, and grabbed him around the neck, pulling his head downwards and knocking his glasses off. Thompson then jumped on his back, and both women hit him. Breaking free, Lallathin ran to the backside of the counter, retrieved his baton, and told McKenzie, who had followed him, that she had to leave or he would "take her out." Id. at 21. Thompson and McKenzie then left the store.

[1] Ind. Code § 35-42-2-1 (Supp. 2007).

During the encounter, another employee at the shoe store had called the police. When the police arrived, Lallathin pointed out Thompson and McKenzie's vehicle. The police pursued and stopped the vehicle, and Lallathin later identified Thompson and McKenzie as the assailants.

The State charged Thompson with battery as a class A misdemeanor, battery by bodily waste as a class A misdemeanor, criminal mischief as a class B misdemeanor, and disorderly conduct as a class B misdemeanor. At a bench trial, Thompson testified that when Lallathin attempted to escort her out of the store, she put her hands in the air and said, "[I]f there's anybody in this store, please be a witness because if he touches me, I'm going to f*** him up." Id. at 70. She then threw or dropped a shoe out of her hand. Id. Thompson further testified that she did not hit Lallathin until Lallathin "karate kicked" her on the thigh and then "started bouncing up and down with his fists balled up." Id. at 72. The trial court found that Thompson was guilty of battery as a class A misdemeanor but acquitted her of the battery by bodily fluid charge. The State moved to dismiss the remaining charges, and the trial court granted the motion. The trial court sentenced Thompson to 365 days with 12 days executed, 353 days suspended, 180 days of probation, and 12 weeks of anger control classes.

The issue is whether the evidence is sufficient to sustain Thompson's conviction. Thompson argues that the evidence is insufficient to sustain her conviction because she acted in self-defense. Self-defense is governed by Ind. Code § 35-41-3-2. A valid claim of self-defense is legal justification for an otherwise criminal act. Wallace v. State, 725 N.E.2d 837, 840 (Ind. 2000). In order to prevail on such a claim, the defendant must

show that he: (1) was in a place where he had a right to be; (2) did not provoke, instigate, or participate willingly in the violence; and (3) had a reasonable fear of death or great bodily harm. Wilson v. State, 770 N.E.2d 799, 800 (Ind. 2002). When a claim of self-defense is raised and finds support in the evidence, the State has the burden of negating at least one of the necessary elements. Id. If a defendant is convicted despite his claim of self-defense, we will reverse only if no reasonable person could say that self-defense was negated by the State beyond a reasonable doubt. Id. at 800-801. The standard of review for a challenge to the sufficiency of evidence to rebut a claim of self-defense is the same as the standard for any sufficiency of the evidence claim. Wallace, 725 N.E.2d at 840. We neither reweigh the evidence nor judge the credibility of witnesses. Id. If there is sufficient evidence of probative value to support the conclusion of the trier of fact, then the verdict will not be disturbed. Id.

We find Brown v. State, 421 N.E.2d 431 (Ind. Ct. App. 1981), instructive. In Brown, the defendant and another individual drove to a tavern from which the defendant had been barred because of an earlier altercation with the bartender. Id. at 432. The passenger entered the tavern while the defendant remained in his car outside. The passenger returned empty handed, and the defendant was driving away when a shot was fired from the tavern. The defendant and the passenger exited the car and returned the fire with shotguns from the back seat of the car. One victim was shot in the face, and another in the leg, and the defendant later pled guilty to battery. The defendant argued on appeal that the trial court erred in accepting his plea of guilty in light of his repeated assertions of self-defense. We rejected this argument as "strained," reasoning that the

defendant "was where he was not supposed to be, had a chance to withdraw and refused, and gave no indication of being in fear of death or great bodily harm." Id.

Similarly, in the present case, Lallathin repeatedly asked Thompson to leave the store once Thompson and McKenzie began throwing shoes, knocking over merchandise, and shouting at Lallathin. We agree with the State that Thompson was in a place where she was not supposed to be. Moreover, although Thompson had several chances to withdraw, she repeatedly refused. Finally, her actions in spitting on Lallathin and later hitting him could hardly be characterized as the actions of an unwilling participant. Although Thompson claims that she only battered Lallathin after he "karate kicked" her, the trial court found Lallathin's testimony more credible, and we cannot reweigh the evidence. See Wallace, 725 N.E.2d at 840. We conclude that there was sufficient evidence from which the trial court could find that Thompson did not validly act in self-defense and that she was guilty of battery as a class A misdemeanor, and we will not disturb the trial court's decision. See, e.g., Birdsong v. State, 685 N.E.2d 42, 46 (Ind. 1997) (affirming the defendant's convictions "[b]ecause there existed sufficient evidence from which the court could find that defendant did not validly act in self-defense and that he was guilty as charged").

For the foregoing reasons, we affirm Thompson's conviction for battery as a class A misdemeanor.

BAKER, C. J. and MATHIAS, J. concur